

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8

9 JAMES BRANCH,

10 Plaintiff,

11 vs.

12 JAMES BARRETT,
13 WASHINGTON STATE PATROL
14 OFFICER HOYT, STATE OF
15 WASHINGTON, STATE OF
WASHINGTON PROSECUTOR'S
OFFICE, and COUNTY OF
WALLA WALLA,

16 Defendants.
17

NO. CV-10-5144-JPH

REPORT AND RECOMMENDATION TO
DISMISS ACTION

18 By Order filed February 7, 2011, the court directed Mr. Branch to complete and
file a financial affidavit as required by 28 U.S.C. § 1915(a)(1), or to pay the \$350.00
19 filing fee, to commence this action. The court cautioned that failure to comply would
20 result in dismissal of this case for failure to prosecute. Plaintiff did not comply.

21 After the court recommended dismissal of this action on March 9, 2011 (ECF No.
22 7), Plaintiff filed documents requesting more time to comply with the court's directive.
23 By Order filed March 28, 2011 (ECF No. 10), the court struck its prior Report and
24 Recommendation and granted Plaintiff an additional thirty days to comply with the *in*
forma pauperis requirements of 28 U.S.C. § 1915(a)(1), or to pay the filing fee. Plaintiff
25 did not comply and has filed nothing further in this action. Accordingly, **IT IS**
26

27
28 REPORT AND RECOMMENDATION TO DISMISS ACTION -- 1

1 **RECOMMENDED** this action be **DISMISSED without prejudice** for failure to
2 prosecute under Fed. R. Civ. P. 41(b).

3 **OBJECTIONS**

4 Any party may object to a magistrate judge's proposed findings, recommendations
5 or report within fourteen (14) days following service with a copy thereof. Such party
6 shall file written objections with the Clerk of the Court and serve objections on all
7 parties, specifically identifying the portions to which objection is being made, and the
8 basis therefor. Any response to the objection shall be filed within fourteen (14) days after
9 receipt of the objection. Attention is directed to FED. R. CIV. P. 6(e), which adds
10 additional time after certain kinds of service.

11 A district judge will make a de novo determination of those portions to which
12 objection is made and may accept, reject, or modify the magistrate judge's determination.
13 The judge need not conduct a new hearing or hear arguments and may consider the
14 magistrate judge's record and make an independent determination thereon. The judge
15 may, but is not required to, accept or consider additional evidence, or may recommit the
16 matter to the magistrate judge with instructions. *United States v. Howell*, 231 F.3d 615,
17 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P. 72; LMR 4, Local
18 Rules for the Eastern District of Washington.

19 A magistrate judge's recommendation cannot be appealed to a court of appeals;
20 only the district judge's order or judgment can be appealed.

21 **IT IS SO RECOMMENDED.** The District Court Executive is directed to enter
22 this Report and Recommendation and forward a copy to Plaintiff at his last known
23 address. The District Court Executive shall set a case management deadline accordingly.

24 **DATED** this 11th day of May, 2011.

25 S/ James P. Hutton

27 JAMES P. HUTTON
28 UNITED STATES MAGISTRATE JUDGE